



*Congress of the United States  
House of Representatives  
Washington, D.C. 20515*

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*Anna G. Eshoo  
Eighteenth District  
California*

September 8, 2015

The Honorable Tom Wheeler, Chairman  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Dear Chairman Wheeler,

I write in response to the Eleventh Broadband Progress Notice of Inquiry released by the Commission last month. The notice offers a timely opportunity to adopt forward-looking policies for broadband that promote the public interest, encourage real competition for consumers, and enhance pricing transparency.

The Commission took a historic step in January by updating its definition of high-speed broadband to better reflect the speeds consumers need to unlock everything the Internet has to offer. I welcomed that decision because it shined a light on the 55 million Americans who today lack access to advanced broadband. Broadband speed is just one factor a consumer must consider when choosing a service provider. To that end, the Commission's inquiry wisely asks whether to consider factors other than speed when assessing broadband deployment, including latency and consistency of service. In the Commission's own words, latency is important because it "affects a consumer's ability to use real-time applications, including interactive voice or video communication."

As the Commission considers whether to establish a comprehensive, consumer-friendly benchmark for broadband which includes these factors, I urge you to review the Government Accountability Office's (GAO) April 2015 report entitled "Broadband Performance: Additional Actions Could Help FCC Evaluate Its Efforts to Inform Consumers."<sup>1</sup> To help consumers more easily compare and select broadband service offerings, the GAO's report discusses the concept of a "voluntary labeling program" and recommends that the Commission "conduct or commission research on the effectiveness of [the] FCC's efforts to provide consumers with broadband performance information and make the results of this research publicly available." The Commission's inquiry is an appropriate proceeding to collect this information and ultimately incorporate into an updated definition of "advanced telecommunications capability."

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<sup>1</sup> *Broadband Performance: Additional Actions Could Help FCC Evaluate Its Efforts to Inform Consumers*, U.S. Government Accountability Office, <http://www.gao.gov/products/GAO-15-363> (Released May 15, 2015).

The Commission's notice also asks whether to consider factors beyond physical deployment, including pricing and data allowances. Below-the-line fees and usage-based pricing have become standard practice for many broadband providers and should be analyzed by the FCC in the course of evaluating the state of broadband deployment. Specifically, I urge you to review the GAO's November 2014 report, entitled, "Broadband Internet: FCC Should Track the Application of Fixed Internet Usage-Based Pricing and Help Improve Consumer Education."<sup>2</sup> The report recommends that the FCC work with wireline broadband providers to develop a voluntary code of conduct, similar to the Wireless Code of Conduct, to improve communication and understanding of data use and pricing by Internet consumers. Consumers deserve greater transparency and disclosure prior to signing-up for broadband service, as well as on their monthly bill. Through this inquiry, the FCC can and should ensure this information is included in the 2016 Broadband Progress Report.

Finally, the notice asks whether mobile broadband services should be included in the Commission's definition of advanced telecommunications capability. Although mobile is not a substitute for high-speed wireline broadband and is technologically distinguishable, both forms of access provide a critical gateway to the Internet and should be viewed as such when examining the state of broadband deployment.

Furthermore, for many traditionally disenfranchised communities including rural, tribal and minorities, mobile broadband is the primary means of accessing the Internet. In fact, according to the Pew Research Center approximately one-third of low-income Americans are primarily smartphone dependent for Internet access and lack broadband at home.<sup>3</sup> As an increasing number of Americans depend on mobile services for learning, employment and advancement, the Commission's definition of advanced telecommunications capability should fully reflect the deployment of both fixed and mobile broadband services.

Thank you for the opportunity to comment on the Commission's inquiry and for your continuing leadership to ensure the public has clear and accurate information about the state of broadband deployment.

Most gratefully,



Anna G. Eshoo, Ranking Member  
Subcommittee on Communications and Technology  
Energy and Commerce Committee

cc: The Honorable Mignon Clyburn, Commissioner  
The Honorable Jessica Rosenworcel, Commissioner  
The Honorable Ajit Pai, Commissioner  
The Honorable Michael O'Rielly, Commissioner

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<sup>2</sup> *Broadband Internet: FCC Should Track the Application of Fixed Internet Usage-Based Pricing and Help Improve Consumer Education*, U.S. Government Accountability Office, <http://www.gao.gov/products/GAO-15-108> (Released December 2, 2014).

<sup>3</sup> CTIA, *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42 (Filed June 11, 2015).





FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

November 16, 2015

The Honorable Anna G. Eshoo  
Ranking Member  
Subcommittee on Communications and Technology  
Committee on Energy and Commerce  
U.S. House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congresswoman Eshoo:

Thank you for your letter regarding the Eleventh Broadband Progress Notice of Inquiry (NOI). I share your goal of ensuring that the public has clear and accurate information regarding the state of broadband deployment in America. Your views are very important and will be included in the record of the proceeding and considered as part of the Commission's review.

The fundamental principle of broadband policy, as set forth by Congress, is that all Americans should have access to robust broadband services, no matter where they live. With this NOI, we set about to quantify the status of achieving that policy goal.

As discussed in the Notice, the Commission will consider a host of factors as we make our statutory determination of whether advanced telecommunications capability is being deployed in a reasonable and timely fashion. We anticipate that this year's Broadband Progress Report will include evaluation of the role of both fixed and mobile broadband services in the provision of advanced telecommunications capability. Further, as in prior years, we expect to consider factors beyond physical deployment in our inquiry into "the availability of advanced telecommunications capability to all Americans." Our statutory determination will be grounded in analysis of all relevant data sources, including, but not limited to, data sources noted in your letter.

Consistent with our customary practice, we will carefully examine the record developed in response to the Notice, as well as other pertinent information, including reports issued by the Government Accountability Office (GAO) concerning the ability of our nation's broadband networks to meet the evolving needs of American consumers.

I share your concern about transparency for broadband consumers. That is why the 2015 Open Internet Order permitted broadband Internet access service providers to meet consumer-facing transparency obligations via a voluntary label. We have received a recommendation from the Consumer Advisory Committee on the format and content of the label, and are considering whether the label as recommended adequately informs consumers about important issues like

network performance and commercial terms—including fees and data allowances.

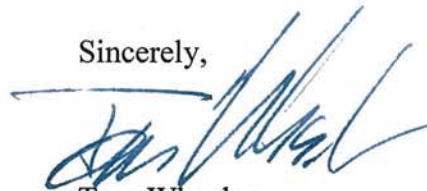
Earlier this year, the Commission defined advanced telecommunications capability as connections with throughput speeds of at least 25 Mbps downstream and 3 Mbps upstream. This standard recognizes how consumers actually use broadband at home today and is “table stakes” in 21st century communications.

But the discussion in the *2015 Broadband Progress Report* of the new speed benchmark emphasized fixed terrestrial broadband services. Even though we were unable to incorporate mobile advanced telecommunications capability into the analysis, the *2015 Broadband Progress Report* found that “the day may be fast approaching when we would consider ‘advanced telecommunications capability’ to be fully deployed only in areas where consumers have access to both mobile and fixed high-speed broadband in light of the distinct characteristics of these services.” Building on the direction laid out in the *2015 Broadband Progress Report*, this NOI now takes the next step by asking whether “advanced telecommunications capability” should be considered fully deployed only in areas where consumers have access to both mobile and fixed broadband. Doing so would recognize the growing use of mobile broadband by consumers.

The NOI also seeks comment on the urban/rural disparity in the deployment of advanced telecommunications capability, asks about speed benchmarks for satellite broadband, and delves further into whether the Commission should adopt latency and consistency benchmarks as a part of the determination of what constitutes broadband.

I appreciate your interest in this matter. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", is written over a horizontal line.

Tom Wheeler